

Azevedo, George

From: Bauer, Candice
Sent: Tuesday, October 17, 2017 11:46 AM
To: Azevedo, George
Subject: FW: Visiting MN regarding the RES
Attachments: 20170213144823.pdf; ATT00001.htm

Candice R. Bauer, Ph.D.
Chief, Section 2
NPDES Branch, EPA Region 5, WN-15J
77 W. Jackson Blvd., Chicago, IL 60604
Office Phone: 312-353-2106, Fax: 312-697-2668

From: Pierard, Kevin
Sent: Monday, February 13, 2017 5:41 PM
To: Bauer, Candice <bauer.candice@epa.gov>
Subject: Fwd: Visiting MN regarding the RES

Sent from my iPhone

Begin forwarded message:

From: "Flood, Rebecca (MPCA)" <rebecca.flood@state.mn.us>
To: "Pierard, Kevin" <pierard.kevin@epa.gov>
Subject: RE: Visiting MN regarding the RES

[Here is the third of 4.](#)

From: Pierard, Kevin [<mailto:pierard.kevin@epa.gov>]
Sent: Tuesday, February 07, 2017 5:24 PM
To: Flood, Rebecca (MPCA) <rebecca.flood@state.mn.us>
Subject: Re: Visiting MN regarding the RES

Rebecca could you resend the letter from 2009 concerning mcea comments on the lake standard. I have not been able to open it. Thanks

Sent from my iPhone

On Feb 4, 2017, at 11:49 AM, Flood, Rebecca (MPCA) <rebecca.flood@state.mn.us> wrote:

[Here is the email with the second attachment](#)

From: Flood, Rebecca (MPCA)
Sent: Saturday, February 04, 2017 10:28 AM

To: 'Korleski, Christopher' <korleski.christopher@epa.gov>; Pierard, Kevin
(pierard.kevin@epa.gov) <pierard.kevin@epa.gov>

Cc: Lotthammer, Shannon (MPCA) (shannon.lotthammer@state.mn.us)
<shannon.lotthammer@state.mn.us>; Neuschler, Catherine (MPCA)
<catherine.neuschler@state.mn.us>; Turri, Wendy (MPCA) (wendy.turri@state.mn.us)
<wendy.turri@state.mn.us>; Weiss, Steven (MPCA) <steven.weiss@state.mn.us>;
Blasing, Nicole (MPCA) <nicole.blasing@state.mn.us>; Coleman, Jean (MPCA)
<Jean.Coleman@state.mn.us>; Schmitt, Mark (MPCA) <mark.schmitt@state.mn.us>

Subject: Visiting MN regarding the RES

Hi Chris and Kevin. Thanks to each of you for reaching out to suggest coming to Minnesota for a face-to-face meeting regarding implementation of Minnesota's River Eutrophication Standard (RES). We agree that it is a very good idea. I think it is essential that both of you, as well as Linda Holst and Candace Bauer attend this meeting. In our view, Linda is an essential part of this conversation, as there needs to be a clearer link between standard development and approval, and permit implementation. If you wish to have other EPA staff participate, that is up to you. From our perspective, attendees would be Shannon Lotthammer, Catherine Neuschler, Wendy Turri, Steve Weiss, Nicole Blasing, Jean Coleman and me. Catherine Neuschler, our Water Assessment Section Manager, will be in touch to arrange this meeting.

We hope that the outcome of such a meeting would be to resolve our current differences and be able to move forward with permit issuance. Right now, we are not issuing permits for those facilities that need RES-based effluent limits due to what we view as EPA changing course regarding approval of our implementation guidance.

I also want to highlight/reiterate several concerns that I have talked about with you, Chris.

1. As we discussed, we think that Candace Bauer has a conflict of interest in this matter, since she previously provided comments on behalf of the Minnesota Center for Environmental Advocacy (MCEA) on the development of Minnesota's Lake Eutrophication Standard in 2009. I have attached those comments for your reference. Despite what you said in your recent voicemail to me, we still see that she has a conflict or a potential/perceived conflict based on the similarity of those 2009 comments compared to the issues she is raising on the RES at this time. We understand from written communications with MCEA that Ms. Bauer's concerns continue to closely mirror MCEA's.
2. EPA staff are bringing no new science to bear in the issues that are being raised on the implementation guidance; the tools being suggested were available when we began to work on implementation. This makes the areas of dispute to be matters of policy and a sudden change would not be easily supported or defensible by MPCA from a legal standpoint.
3. The Minnesota Court of Appeals just decided the Winsted matter (decision attached). Again, several of the issues that are raised by MCEA in this matter are similar to the issues we are currently in dispute with your staff about. The Court found in favor of MPCA. They have determined that our implementation assumptions are reasonable. We think that this should be compelling to EPA.
4. We are sending EPA (Scott Ireland) a letter requesting clarification on whether EPA's letter on the Delano permit is an objection letter under 40 CFR 123.44. We were surprised to receive such a letter, as we thought that we had agreed that the time was not ripe. As a result, we feel compelled to send a response.

As you know, we have been wrestling with these issues for several years and we can no longer afford to let these matters linger, from both a relationship and a resource perspective. We are the only state in Region 5 that is actively implementing RES and have done so in 30 permits, 18 of which EPA has already reviewed under MPCA's current implementation approach and has not objected to. There is no valid scientific basis on which to change our approach. We have to move forward for the sake of our water and financial resources. Changing our approach after so short of a time implementing it is a serious threat to our program integrity.

Again, we appreciate your willingness to meet with us to resolve these matters. As I stated above, these issues are currently stopping us from issuing permits that include new RES-based limits. As a result, we would appreciate meeting with you as soon as possible. Catherine will be in touch. Best regards,

Rebecca J. Flood
Assistant Commissioner
Minnesota Pollution Control Agency
651-757-2022

Our mission is to protect and improve the environment and enhance human health.

<Winsted Case Decision - MPCA vs MCEA_Jan 30 2017.pdf>